

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

DARIEN RODRIGUEZ LOBAINA

PETITIONER

VS.

CIVIL ACTION NO. 3:17-cv-325-WHB-JCG

WARDEN LARRY SHULTS

RESPONDENT

OPINION AND ORDER

This cause is before the Court on the Report and Recommendation ("R and R") of United States Magistrate Judge John C. Gargiulo. After considering the R and R¹, the other pleadings in this case, as well as relevant authorities, the Court finds the R and R should be adopted in its entirety.

I. Discussion

On May 3, 2017, Darien Rodriguez Lobaina ("Lobaina"), who was then serving a federal sentence at the Federal Correctional Complex in Yazoo City, Mississippi ("FCC-Yazoo"), filed a Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 ("2241 Petition") in this Court² seeking immediate release from custody on a claim that his sentence had been miscalculated. While the 2241 Petition was

¹ The parties were required to file objections to the R and R on or before October 11, 2018. No objections were filed.

² As Lobaina is proceeding pro se, the allegations in his pleadings have been liberally construed. See United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994).

pending, Lobaina was released from federal custody, but did not notify the Court of his change of address.

On May 25, 2018, United States Magistrate Judge John C. Gargiulo entered an Order requiring Lobaina to show cause as to the reason(s) his 2241 Petition should not be dismissed based on (1) his failing to comply with the Orders of the Court by which he was required to provide notice of changes in his address, and/or (2) his being released from federal custody. See Show Cause Order [Docket No. 13], 2. Lobaina did not respond to the Show Cause Order.

On September 24, 2018, Judge Gargiulo entered a Report and Recommendation ("R and R") recommending that Lobaina's 2241 Petition be denied. See R and R [Docket No. 15]. Judge Gargiulo's recommendation was based on a finding that the Court could not grant Lobaina the relief requested in his Petition because he had already been released from federal custody. See id. at 3. Judge Gargiulo also found that the 2241 Petition should be dismissed for failure to prosecute as evidenced by Lobaina's failure to notify the Court of changes in his address, and to respond to the Show Cause Order. Id. at 3-4.

The Court has reviewed the R and R, to which no objections were filed, as well as the Docket and other pleadings in this case. After review, the Court agrees that Lobaina's 2241 Petition should be denied for the reasons stated by Judge Gargiulo. Accordingly,

the Court will adopt Judge Gargiulo's R and R recommending the dismissal of this case.

For the foregoing reasons:

IT IS THEREFORE ORDERED that the September 24, 2018, Report and Recommendation of United States Magistrate Judge John C. Gargiulo [Docket No. 15], is hereby adopted as the ruling of this Court.

A Final Judgment dismissing this case shall be entered this day.

SO ORDERED this the 16th day of October, 2018.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE